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No. 85-875

In The
Supreme Court of the United States
October Term, 1985

STATE OF RHODE ISLAND AND
PROVIDENCE PLANTATIONS,

Petitioner,

vs.

LUIGI MANOCCHIO,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Rhode Island

SUPPLEMENTAL BRIEF OF THE PETITIONER

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RULE CITED:

Supreme Court Rule 22.6 1

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Now comes the State of Rhode Island and Providence Plantations, Petitioner herein, by its attorney, and files the within supplemental brief for purposes of addressing a recent decision of this Honorable Court. This supplemental brief is filed pursuant to Rule 22.6.

WHETHER THE DECISION OF THE RHODE ISLAND SUPREME COURT RESTED ON AN ADEQUATE STATE LAW BASIS?

Petitioner files the instant memorandum for the purpose of directing this Court's attention to the recently-decided case of *New York v. Class*, No. 84-1181, 54 U.S. L.W. 4178 (U.S., Feb. 25, 1986). Before addressing the *Class* case, a brief summary of the instant case is in order.

This case is before the Court on a Petition for Certiorari filed by the State of Rhode Island and Providence Plantations. The Supreme Court of Rhode Island reversed the conviction of Respondent Luigi Manocchio (Pet. App. 1 to 10), holding that limitation of cross-examination constituted *per se* reversible error under the rule of *Davis v. Alaska*, 415 U.S. 308 (1974). (Pet. App. at 7 (applying *per se* reversal rule)) The Petitioner submits that this was an erroneous decision.

Petitioner contends that, instead of applying a rule of *per se* reversal, the Rhode Island Supreme Court should have conducted a thoroughgoing analysis of the trial evidence to determine whether the limits placed upon cross-examination resulted in actual trial prejudice to the defendant.[1] In opposing certiorari in this case, Respondent Manocchio has argued *inter alia* that the Rhode Island Su-

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1 Petitioner has addressed this Court's attention to the pending case of *Delaware v. van Arsdall*, No. 84-1279, argued Jan. 22, 1986, and has suggested that the issue presented herein is likely to be controlled by the outcome of the *van Arsdall* decision. Accordingly, Petitioner has moved to defer disposition of the instant petition until such time as the Court renders its decision in *van Arsdall*. To date, this Court has not yet ruled on the Petitioner's motion to defer.

preme Court's *per se* rule of reversal rests upon an adequate state law basis. Petitioner disputes this contention and suggests that this Court's decision in *Class, supra,* disposes of Respondent's argument.

In *Class,* this Court clearly held that in order to constitute an adequate state law ground, the state court decision must contain within it a "requisite 'plain statement' that it rests on state grounds." *New York v. Class,* slip op. 54 U.S.L.W. at 4179 (quoting *Michigan v. Long,* 463 U.S. 1032, 1042, 1044 (1983)). In the instant case, Respondent Manocchio concedes that the decision of the Rhode Island Supreme Court lacked such a statement. (Resp. Opp. at 14 (conceding that R.I. opinion fails to comply with requisites of *Michigan v. Long, supra*)) Indeed, an examination of the Rhode Island court's opinion clearly demonstrates that the court cited both state and federal cases in support of the *per se* reversal rule. (Pet. App. 6 to 8) Thus the lower court decision in this case is extremely similar to the New York decision reviewed by this Court in *Class.* The *per se* reversal rule invoked by the state court in the instant case had as its purported source the decision of this Court in *Davis v. Alaska, supra.* Contrary to Respondent Manocchio's assertion, there is no adequate state law basis for the Rhode Island Supreme Court's judgment. Because the Rhode Island court's decision rests primarily upon federal law, its judgment is open to a full review by this Court on certiorari.

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CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition for Certiorari, this Court should grant a writ of certiorari to review the judgment of the Rhode Island Supreme Court.

Respectfully submitted,

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS,

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